

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5390 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

JESING G SARTEJA

Appearance:

MR HARDIK C RAWAL for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/1999

ORAL JUDGEMENT

Learned advocate Mr. Raval is appearing for the petitioner Corporation. Though served, the respondent has not appeared before this Court either in person or through an advocate.

The facts of the present petition, in short, are that the respondent workman, while working as a conductor, on 21st April, 1987, was found to have

collected the fare of Rs.48.00 from 16 passenger but has not issued tickets to those passengers. He was served with a notice to show cause as to why his name should not be deleted from the wait list of badli conductors. He was also given an opportunity to appear before the Committee and, thereafter, his name was deleted from the wait list of badli conductors by order dated 25th June, 1987. Said order of termination and deleting his name from the wait list of badli conductors was challenged by the respondent workman before the labour court, Rajkot by filing reference no. 289 of 1988. The labour Court, Rajkot, under its judgment and award dated 21st April, 1989, directed the petitioner Corporation to reinstate the respondent workman in service with continuity on his original post by reinserting his name in the waiting list of badli conductors with effect from 1.6.1987. Under the impugned judgment and award, the labour court has held that the respondent workman is not entitled to any back wages for the intervening period. Said judgment and award passed by the labour court Rajkot has been challenged by the petitioner Corporation before this Court by filing this petition.

This Court, while admitting the present petition, has directed the petitioner corporation to insert the name of the respondent workman in the wait list of badli conductors, subject to the result of the present petition. In short, while admitting this petition, no interim stay was granted by this Court. Accordingly, the name of the respondent workman was reinserted by the petitioner corporation in the wait list of badli conductors.

Before the labour court, the respondent workman has raised a contention that his name has been deleted from the wait list of badli conductors on the basis of misconduct alleged to have been committed by him but before doing so, the petitioner corporation has not held any departmental inquiry and no reasonable opportunity was given to him for defending himself and the action has been taken in utter disregard to the principles of natural justice. Before the labour court, the petitioner corporation has contended that in case of badli conductors, it was not necessary for the corporation and the Corporation was not under an obligation to held detailed departmental inquiry under the discipline and appeal procedure and, therefore, before taking the action, the respondent workman was served with a notice to show cause as to why his name should not be deleted from the wait list of badli conductors and after considering the reply given by the respondent workman,

the action was taken which was, according to the petitioner corporation, just and proper and that the same was not in violation of the principles of natural justice.

The labour court, after considering the submissions made from both the sides as also the evidence brought before it, came to the conclusion that it is necessary that for deleting the name of the respondent workman from the wait list of badli conductors on the basis of the alleged misconduct, the petitioner corporation ought to have held detailed departmental inquiry in accordance with the principles of natural justice and, therefore, the labour court has come to the conclusion that since no departmental inquiry was held against the respondent workman was held before deleting his name from the wait list of badli conductors, there was violation of the principles of natural justice. The labour court, however, has observed that there was some negligence on the part of the respondent workman and, therefore, the labour court has, while ordering for reinstatement of the respondent, denied the back wages for the intervening period.

Learned advocate Mr. Raval appearing for the petitioner corporation has submitted that the view taken by the labour court is erroneous and contrary to the settled principles of law. He has submitted that looking to the misconduct committed by the respondent workman, the labour court ought not to have directed the petitioner corporation to reinstate him in service.

I have considered the submissions made by learned advocate Mr. Raval. I have also perused the impugned award passed by the labour court. According to the decision of this Court reported in 1993(1) GLR 442, in case of badli conductor or badli workman, if his name has been removed for committing the misconduct without holding detailed departmental inquiry and without giving him any opportunity, then, in that case, the termination order was found to be illegal and against the principles of natural justice. This Court has also clarified that in case when the show cause notice was issued to the workman for the alleged misconduct and the same was replied by the workman, in that circumstances, detailed departmental inquiry is necessary. Therefore, now, that controversy has been decided by this court in above referred case and, therefore, I am of the opinion that the decision of the labour court is in consonance with the decision referred to hereinabove and the same does not require any interference by this court. It is also

required to be noted that this court has not granted any interim relief while admitting this petition. On the contrary, while admitting this petition, this court has directed the petitioner corporation to reinsert the name of the respondent workman in the wait list of badli conductors, subject to the final decision of this petition. Therefore also, after passage of about ten years or so, now, it is not just and proper to disturb the present position of the workman. After this much period, he must have been regularized as such and, therefore, taking into consideration all these facts and circumstances of the case as also keeping in view the ratio of the decision reported in 1993 (1) GLR 442, I am of the opinion that this Court should not interfere with the impugned award of the labour court. No error apparent on the face of record has been pointed out by the learned advocate Mr. Raval. Mr. Raval has also not been able to point out any infirmity in the impugned judgment and award of the labour court. Therefore, this petition is required to be dismissed.

This petition is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

8.10.1999. (H.K.Rathod,J.)

Vyas